

RESOLUTION NO. 14-023**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
APPROVING CONDITIONAL USE PERMIT NO. UP13-0020 AND MINOR SITE
DEVELOPMENT PERMIT NO. MS14-0001, A REQUEST TO ADD SIX NEW UNITS
TO AN EXISTING LEGAL NONCONFORMING HOTEL, PERMIT SHARED
PARKING AND INSTALLATION OF MINOR SITE MODIFICATIONS AT THE
AMERICAS BEST INN LOCATED AT 485 SOUTH MAINT STREET**

WHEREAS, on November 18, 2013, an application was submitted by Anil Patel, parcel and hotel owner, 485 S. Main Street, Milpitas, CA 9503 to allow for the conversion of ten (10) parking spaces located under the building on the ground level into 1,611 square feet of habitable space for six (6) new hotel rooms to be added to an existing legal nonconforming hotel and installation of various site improvements. The project also includes a Conditional Use Permit to allow an expansion of a legal, nonconforming hotel use and permit seventeen (17) shared parking spaces with the property located at 529 S. Main Street. The hotel property is located at 485 S. Main Street (APN 86-10-029) within the Mixed Use Zoning District.

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project exempt under CEQA pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA). The project entails a building and minor site modification to allow a 6-unit addition to an existing hotel.

WHEREAS, on May 28, 2014, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The project is categorically exempt from further CEQA review under Section 15301 of the CEQA Guidelines, Existing Facilities. The project entails a building and minor site modification to expand an existing hotel. The proposed expansion consists of converting ten (10) parking space into approximately 1,611 square feet of habitable space that would allow for six (6) new rooms to be added to the first floor of hotel building and will not create any significant environmental impact.

Section 3: Conditional Use Permit (Section XI-10-57.04(F)) - *The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP13-0020:*

- a. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

The hotel use is consistent with the purpose and intent of the Mixed Use Development Zoning District in that it is a commercial service establishment that provides for accommodations for a certain demographic of travelers. The existing hotel is a complementary use given nearby restaurants and retail shops on Main Street and proximity to regional employment centers and recreational destinations.

With regard to the legal, nonconforming status of the use and building, the conditional use permit would authorize the enlargement of the existing legal non-conforming hotel consistent with the Milpitas Zoning code. The proposed building addition would not further exacerbate the legal nonconformity of the building in that the addition would not change the existing building setbacks. Currently, the rear and side yard setbacks do not comply with the 10-foot minimum setback. The addition would be constructed within the existing building footprint. The proposed additional is less than 30% of the total building area and therefore meets the conditional use permit provisions to allow for the addition.

According to the Milpitas Police Department records, there were a total of 336 events between 2012 to 2014 which included calls for service for disorderly conduct, recovered stolen vehicles, drug activity, and suspicious circumstances to name a few. As conditioned, the project will not be detrimental or injurious to property, improvements, or to public health, safety, and general welfare in that the maintenance and operations of the establishment provides for an orderly and harmonious development. The conditions of approval would require the hotel operator to include additional security measures and implement procedures to ensure a safe environment and discourage illegal activities as further discussed in the staff report.

As conditioned, the proposed shared parking will not create a negative impact in that the shared parking facility is located within 60-feet and is accessible by a pedestrian sidewalk.

- b. The project is consistent with the Milpitas Zoning Ordinance.*

The project is consistent with the Milpitas Zoning Ordinance based on the following:

- i. With respect to land use, hotels and motels are conditionally permitted uses in the Mixed Use Zoning District.*
- ii. With respect with development standards, the existing hotel building is legal nonconforming structure in that the side and rear setbacks do not provide the minimum 10-foot setback. However, the proposed addition will not change any of the existing building setbacks. The addition is proposed within the existing building footprint. Furthermore, the proposed addition is less than 30% of the existing total building area and can be granted with a conditional use permit.*

- iii. With respect to the shared parking, the project complies with the zoning requirements in that the shared parking facility is located approximately 60-feet away measured at the property line which is well within the 300-foot distance requirement. There is an existing pedestrian sidewalk that provides clear, safe pedestrian connection between both sites. The hotel and office use have different parking patterns and peak demands. The office use peaks during the weekday during the AM and PM peak hours while the hotel use typically peak during weekday evenings.
- iv. With respect to the architectural modifications, the proposed improvements provide for an aesthetic and harmonious development. The building addition will utilize colors, material and style to match the building and its mission revival architecture.

c. The proposed use is consistent with the Milpitas General Plan.

The proposed project is an expansion of an existing hotel. Based on staff analysis, the project is consistent with the following General Plan Policies:

- i. Policy No. 2.a-G-6 - Implement the Midtown Specific Plan goals, policies and development standards and guidelines to create a mixed-use community that includes high-density, transit-oriented housing and a central community ‘gathering place’ while maintaining needed industrial, service and commercial uses.

Analysis: The project further implements the Midtown Specific Plan goals and policies in that it expands an existing hotel that provides a commercial service use in the Mixed Use District. Due to the proximity to Milpitas, Fremont, and North San Jose employment centers as well as regional attractions like Great America and the new Levi Stadium, the hotel use would cater to out of town visitors.

- ii. **Policy No. 2.a-I-3** - Encourage economic pursuits which will strengthen and promote development through stability and balance.

Analysis: The project encourages economic pursuits and strengthens and promotes development in that the proposed use provides transit occupancy tax revenue to the City. The hotel use complements multiple restaurants and retail stores such as the Great Mall along Main and Abel Street.

d. The proposed use is consistent with the Milpitas Midtown Specific Plan.

The project is consistent with the Midtown Specific Plan Land Use Goal in that the project is a commercial service establishment that is compatible mixture of existing residential, commercial service, office, and industrial uses within the Midtown Area. The project is also consistent with the Mixed Use Designation.

Section 4: Site Development Permit (Section XI-10-57-03(F) - The Planning Commission makes the following findings based on the evidence in the public record in support of Minor Site Development Permit No. SD14-0001:

- a. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

The project is consistent with this finding because existing site layout, building setback, and building form are compatible with the surrounding development that were constructed within the same time frame. The proposed addition would maintain the same architectural character by utilizing colors, materials and styles that match the existing building.

- b. The project is consistent with the Milpitas Zoning Ordinance.*

The project is consistent with this finding as described above.

- c. The project is consistent with the Milpitas General Plan.*

The project is consistent with this finding as described above

- d. The project is consistent with the Midtown Specific Plan.*

The project is consistent with this finding as described above

Section 6: The Planning Commission of the City of Milpitas hereby adopts Resolution No. 14-023 approving Conditional Use Permit No. UP13-0020 and Minor Site Development Permit No. MS14-0001 to add (6) six new hotel rooms to an existing legal non-conforming hotel, permit shared parking facilities, and installation of minor site modifications based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 incorporated herein.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on May 28, 2014.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on May 28, 2014 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
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COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal				
Demetress Morris				
Gurdev Sandhu				
Garry Barbadillo				
Hon Lien (alternate)				

EXHIBIT 1

**CONDITIONS OF APPROVAL
AMERICAS BEST INN – UP13-0020 AND MS14-0001 – 485 S. MAIN STREET**

General Conditions

1. General Compliance. The applicant and owner, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Conditional Use Permit No. UP13-0020 and Minor Site Development Permit No. MS14-0001 (collectively “Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 - a) Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
6. Project Job Account. If Permittee’s project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until

Permittee's private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.

7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon

demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Fees and Charges: Permittee shall pay all required fees and charges to City at the rate in effect when the fees and charges are due and payable to City.
16. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on May 28, 2014, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

Conditional Use Permit

17. Require all adult guests and visitors to present valid government-issued identification at the front desk upon check in. Desk clerks shall obtain the following from registered guests:
 - a) Name, address and phone number
 - b) Government ID number and ID type. A photocopy of the valid government issued picture identification should be obtained to ensure accuracy of the check-in information.
 - c) Vehicle license plate number prior to issuance of parking permit/pass
18. The register record shall be maintained for a period of not less than two (2) years and may be inspected by City upon request or a copied shall be provided to City upon request.
19. Prominently post notices and signs that clearly outline appropriate guest and visitor behavior to dissuade guest from engaging in illegal activities.
20. Implement clear check-in policies and provide proper training for desk clerks on guest screening and security procedures.
21. Provide safe and adequate lighting within the facility, especially within the hallways, common areas, and parking lot. The established lighting within the facility will be subject to the review, modification and approval of the City's Police Department.

22. Prior to building permit final, the applicant shall install closed circuit video surveillance cameras in all common areas, driveway, and parking lot areas and video recordings shall be maintained for no less than one-month or 30 days. The resolution of the surveillance cameras shall be 720p or better. Surveillance recordings shall be made available at any time to the Police Department upon request.
23. Surveillance equipment shall not be inoperable at any time, other than when being serviced by a qualified professional surveillance equipment technician for no more than two (2) days at any given time and no more than six (6) days within any 365 day period.
24. The CUP shall be reviewed by the Planning Commission in a fully noticed public hearing within one (1) year of occupancy for the additional six (6) units. The Planning Commission may modify or impose additional conditions as appropriate to address any issues related to public safety. The applicant shall bear the costs of all materials and fees associated with the hearing.
25. Prior to any building permit issuance, the Permittee shall submit a parking plan for both the hotel property and the shared parking property that indicates designated shared parking spaces, pedestrian connection, and conformance with all parking requirements of the Milpitas Municipal Code.
26. Prior to any building permit issuance, Permittee shall install bicycle racks. The location, design and number shall be subject to the approval of the Planning Division.
27. Permittee shall at all times maintain and record against each property with the County recorder a valid written agreement subject to City approval for seventeen (17) parking spaces otherwise assigned to the property at 529 S. Main Street, which designated spaces shall be no more than 300 feet from the subject site's property.
 - a) The agreements shall specify the Permittee and its guest and invitees are entitled to use said assigned spaces during the hours of operation for the Americas Best Inn. If the Permittee loses permission to use some or all said parking spaces, and is unable within thirty (30) days thereafter, to secure permission to use the same number of parking spaces within 300 feet of its property by means of a parking agreement approved by City, this Conditional Use Permit shall be subject to Section 10.63.06, Revocation, Suspension, Modification, of the Milpitas Zoning Ordinance.
28. The fully executed Shared Parking Agreement provides Americas Best Inn the right to use seventeen (17) spaces all year around on the weekdays between the hours of 7:00PM to 7:00AM and 7:00AM and on weekends between the hours of 7:00PM to 7:00AM on the weekends for the exclusive use of the Grantee, and its officers, directors, trustees, employees, volunteers, customers, members, visitors, and invitees. The location of the shared parking spaces are incorporated as part of the Shared Parking Agreement.

Site Development Permit

29. Prior to any building permit issuance, Permittee shall revise site plan to show a stamped colored concrete pedestrian crosswalk connecting from the public sidewalk to the building.

30. Prior to any building permit issuance, the Permittee shall provide a landscape and irrigation plan to demonstrate planting materials match the existing planting theme and materials.
31. Colors, materials, and style shall match the existing building and mission revival architecture.

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney